

APPEAL NO. 022746
FILED DECEMBER 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 1, 2002. As to the sole issue before him, the hearing officer determined that the impairment rating (IR) of the respondent (claimant) is 20% pursuant to the report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The appellant (self-insured) appealed, asserting that the designated doctor improperly applied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), and that the designated doctor's certification is contrary to the great weight of the other medical evidence. The self-insured requests that this matter be remanded so that the AMA Guides can properly be applied and so that the designated doctor can have all of the "requisite tangible and medical evidence before him during the examination." The file does not contain a response from the claimant.

DECISION

We affirm.

The parties stipulated that the claimant sustained a compensable injury on _____, and that she reached maximum medical improvement on October 9, 2001. The medical records reflect that the compensable injury involved the claimant's neck and right shoulder. On January 5, 2001, the self-insured's required medical examination (RME) doctor certified that the claimant had a 13% IR. The RME doctor's certification consisted of 2% impairment for range of motion (ROM) loss in the right shoulder; 5% for loss of cervical ROM; and 6% for specific disorders under Table 49, Section (II)(B) of the AMA Guides.

On January 29, 2002, the designated doctor certified that the claimant had a 20% IR. The designated doctor's certification consisted of 13% for loss of cervical ROM (2% flexion; 4% extension; 2% right lateral flexion; 1% left lateral flexion; 2% right rotation; and 2% left rotation) and 6% for specific disorders under Table 49, Section (II)(B), for a total cervical impairment of 18%; and 4% for loss of ROM in the right shoulder (1% flexion; 1% abduction; 1% internal rotation; and 1% external rotation).

On February 8, 2002, a self-insured requested peer review was issued. The peer review questioned the 13% loss of cervical ROM found by the designated doctor stating that there is no anatomic or physiologic basis for it. The peer review goes on to state "[b]ecause ROM is under the direct control of the individual being tested, it is easy for the individual to give submaximal effort." We note that while the peer review report does question the amount of ROM found by the designated doctor, it does not question his application of the AMA Guides *per se*.

On March 26, 2002, the RME doctor reviewed the designated doctor's certification and the peer review report and reevaluated the claimant. He reduced his IR from 13% to 6%. The 6% was for specific disorders of the cervical spine only, and no impairment for loss of ROM in the cervical spine or right shoulder was included.

The Commission forwarded the peer review to the designated doctor and asked for his comments. On April 5, 2002, the designated doctor responded indicating that his opinion had not changed regarding his certification.

The self-insured placed the claimant under video surveillance and forwarded it to the peer review doctor for his review. Upon viewing the video, the peer review doctor stated:

[o]ne thing that can be said for certain is that the individual depicted in the video does not have any impairment at the level assigned. This individual was observed to perform the usual activities of daily living, which included driving a car, [b]ending, stooping and carrying fairly heavy appearing items. The claimant demonstrated no inability or signs of discomfort. Further, ROM was observed in the cervical spine, which indicates that the measurements do not represent maximum effort.

The self-insured asserts that the designated doctor misapplied the AMA Guides because the cervical left lateral flexion angles did not meet the plus or minus 10% or 5° criteria. We do not agree that the designated doctor erred in this regard. The angles were measured as being 20°, 25°, and 26°. While we agree that 20° and 26° are neither within 5° nor 10% of each other, we do not agree that that is dispositive to the issue. With regard to the validation requirements for ROM testing, we have held that the difference in measurements may be computed from the median number or the maximum number. Texas Workers' Compensation Commission Appeal No. 980985, decided June 26, 1998. See also Texas Workers' Compensation Commission Appeal No. 990678, decided May 17, 1999 (Unpublished). In this case, the median number is 25 and since both 20 and 26 are within 5° of that number, the measurements are valid.

The self-insured urges a remand so that the designated doctor can have all of the "requisite tangible and medical evidence before him during his examination." The self-insured is referring to the surveillance video, which their peer review doctor commented on and the Commission declined to send to the designated doctor. The hearing officer has discretion regarding what information is sent to a designated doctor. Texas Workers' Compensation Commission Appeal No. 950959, decided July 28, 1995. We perceive no error in this case.

The self-insured asserts that the designated doctor's certification is against the great weight of the other medical evidence. Whether the great weight of the other medical evidence is contrary to the designated doctor's IR is a fact question for the hearing officer. The hearing officer determined that the designated doctor's 20% IR was entitled to presumptive weight. Nothing in our review of the record indicates that the

hearing officer's determination in this regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Finally, the self-insured asserts that the hearing officer used the wrong legal standard in deciding this case. The hearing officer made the required findings and conclusions in the decision and order, as required by the 1989 Act. We perceive no error. See Texas Workers' Compensation Commission Appeal No. 990375, decided April 8, 1999; Texas Workers' Compensation Commission Appeal No. 980313, decided March 25, 1998 (Unpublished).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

LJ
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judge